

15 May 2012

The Honourable Jason Kenney, P.C., M.P.  
Minister of Minister of Citizenship, Immigration and Multiculturalism  
Citizenship and Immigration Canada  
Ottawa, Ontario  
K1A 1L1

Re: International Conscientious Objectors Day

Dear Minister Kenney,

Today is International Conscientious Objectors Day. On this occasion and on behalf of the Commission on Justice and Peace of the Canadian Council of Churches, I am writing to you to express our support for the American conscientious objectors to the war in Iraq (commonly called the “war resisters”) who have sought refuge in Canada.

Several member churches of the Canadian Council of Churches have provided care and support for the war resisters since January 2004 when the first US war resisters came to Canada.

More than eight years on, our concern deepens as this matter remains unresolved, leaving the US war resisters and their families, now well-established in Canada and contributing to their local communities, in limbo.

On July 22, 2010, Citizenship and Immigration Canada sent a directive (Operational Bulletin 202)<sup>1</sup> to all immigration officers in Canada, focusing on the processing of military deserters who claim refugee status in Canada. The first paragraph of the directive implies that military deserters from other countries who are seeking refugee protection in Canada may also be serious criminals and therefore inadmissible to Canada, as desertion is a serious crime in some countries. When this effort to discourage military personnel prevents them from exercising conscientious objection rights guaranteed in the UN Handbook for Refugees then this is not in accord with respect to Canada’s adherence to the norms of universal human rights.

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<sup>1</sup> <http://www.cic.gc.ca/english/resources/manuals/bulletins/2010/ob202.asp>

Conscientious objection to military service, whether by draft resisters or deserters, is a widely recognized ground for granting refugee protection, both in Canada and internationally. As churches, rights of conscience and religion hold a particular significance for us as we seek to encourage people to live faithful lives. We are of the opinion that when they have followed their conscience in the decision they made to refuse to serve in war and to come to Canada then their circumstances warrant humanitarian and compassionate relief. Their beliefs are protected under domestic and international law, and facilitating their punishment by returning them to the United States, in our opinion, is regrettable (*a backgrounder on theological and legal arguments in favour of conscientious objection is appended*).

We ask the Government of Canada to either allow the US war resisters to stay in Canada on humanitarian and compassionate grounds or to create a mechanism, perhaps a revision of Bill C-440 that would enable them to apply for status from within Canada.

We look forward to your response and would welcome an opportunity to meet regarding this concern.

In Christ,

A handwritten signature in cursive script that reads "Joy Kennedy".

Joy Kennedy

Chair

Commission on Justice and Peace of the Canadian Council of Churches

cc: Stephen Harper, Prime Minister of Canada  
Jinny Sims, Immigration, Citizenship and Multiculturalism Critic (NDP)  
Kevin Lamoureux, Immigration, Citizenship and Multiculturalism Critic (Liberal Party)  
André Bellavance, Immigration, Citizenship and Multiculturalism Critic (Bloc Québécois)

## **Backgrounder**

### **Theological and Legal Arguments in Support of Conscientious Objectors to War (November 9, 2011)**

#### **Introduction**

The churches' concern with issues of peace and of conscience is longstanding and theologically rooted. The Christian church is guided by the biblical vision of a peaceable kingdom (Isaiah 11:1-10), which calls for an end to destruction and harm. The moral qualities held up in the teachings of Jesus given in his Sermon on the Mount (Matthew 5) are some of the keys towards the realization of the peaceable kingdom: meekness, mercy, purity of heart, a willingness to suffer for righteousness' sake.

Peace (Gk *eirene*) is a fundamental teaching of the church, and it is reflected in almost every writing of the Scriptures. As Isaiah reminds us, "Peace is the effect of righteousness" (Is. 32.17). The Latin translation (Vulgate) of this text reads "opus justitiae pax", that is, "peace is the work of justice". This means that peace is not a state of calm and ease, or even the end of war, it is a way that calls us to seek a just world through ethical behaviour (righteousness), a world beyond enemies and violence.

Ostensibly, righteousness and conscience are inter-related concepts. Conscience may be defined as the Light within that shows and reveals or as a judgment of reason which at the appropriate moment enjoins a person to do good and to avoid evil. For many people of faith, following one's conscience is understood as following the will of God. However understood, conscience is a gift that helps teach and guide us ethically in the many choices we are faced with in this life.

Yet, conscience is not limited to a person's location on the path of faith – it prods us and leads us regardless of faith. This is recognized not just philosophically and theologically, but legally. Such is the influence of conscience in the functioning of our society that rights of conscience are recognized in Canadian and international law. Moreover, such rights of conscience in Canadian and in international law are not dependent on a rootedness in religious belief.

#### ***Canadian Law***

Conscientious objection to war is perhaps the most well known expression of conscience that brings the individual into potential conflict with the state. Canada has a long history of accommodating conscientious objectors,<sup>2</sup> including the protection provided to conscientious objectors since 1793 when Lord Simcoe, the Lieutenant-Governor of Upper Canada, enacted the Militia Act, which promised exemption to Quakers, Mennonites and Brethren in Christ to encourage them to immigrate to

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<sup>2</sup> <http://co.mcc.org/canada/co/history.html>

Canada. Notably, the Militia Act recognized "scruples of conscience" as a valid ground for conscientious objection, in addition to the validity of religious grounds.

Since 1868, Canada has passed laws or made provisions for conscientious objectors that reflected evolving interpretations of rights of conscience. To illustrate, though Canada first limited the ability to refuse military service to particularly religious faiths during times of conscription, through the Canadian Charter of Rights and Freedoms, Canada now recognizes the right of freedom of conscience. As it states, "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion" (Sec.2). Given Canada's historic record, individuals can now make a claim for conscientious objector status on the basis of the Charter and historic precedents should conscription ever be reintroduced. Significantly, it is recognized by the Canadian Forces that those who join the military can develop a conscientious objection to war and bearing arms at any time and can seek a discharge on this basis.<sup>3</sup>

While this is laudable, it does not yet reach the current standard of interpretation in international law which clarifies conscientious objection can be selective, such as to particular war when the person believes it contravenes international standards of law or human rights.<sup>4</sup>

### ***International Law***

Our support for those expressing their rights of conscience, including the US war resisters, is also rooted in the evolving standards of recognition of conscientious objection to military service in international law.

The UN Declaration on Human Rights, a part of international customary law, recognizes the existence of conscience and rights of conscience, as it states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (*Article 1*)

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (*Article 18*)

More critical, as it is a treaty binding upon Canada, the International Covenant on Civil and Political Rights (ICCPR) cites rights of conscience in Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in

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<sup>3</sup> <http://www.admfincs.forces.gc.ca/dao-doa/5000/5049-2-eng.asp>

<sup>4</sup> Even the earliest ideas in Christian and non-Christian tradition of "just war theory" identified the existence of selective objection to war.

- public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
  3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals of the fundamental rights and freedoms of others.

Article 18 above has explicitly been found to protect the right to conscientiously object to military service. The Human Rights Committee, the body established to oversee the implementation of the ICCPR, has also clarified that the right to change or adopt a religion or belief that is enshrined in Article 18, protects those individuals who develop principled objections to military service after having originally volunteered to serve. Furthermore, selective objection to military service (objection to a particular war or form of military service, as opposed to an objection to all war or all use of force in general) is protected within the scope of Article 18.<sup>5</sup>

Speaking to our concern that, if deported, the US war resisters would likely be subject to imprisonment for their desertion for conscience's sake, the UN Working Group on Arbitrary Detention recently stated that imprisonment of a conscientious objector to military service amounts to arbitrary detention resulting from the exercise of rights or freedoms guaranteed by Article 18 of the *Universal Declaration of Human Rights* and Article 18 of the ICCPR.<sup>6</sup>

The US war resisters have been arguing for protection as refugee claimants which has credibility in this area of international law. The UNHCR *Handbook* specifically addresses the question of principled objection to military service (paragraphs 167-174). At paragraph 170 the *Handbook* instructs that:

There are, however, cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.<sup>7</sup>

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<sup>5</sup> UN Commission on Human Rights Resolution 1998/77 Conscientious objection to military service.

Human Rights Committee Concluding Observations on Spain (CCPR/C/79/Add.61), 3 April 1996 at paragraph 15.

Brett Rachel, *International Standards on Conscientious Objection to Military Service*, Human Rights & Refugees Publications, Quaker United Nations Office, November 2008.

<sup>6</sup> UN Working Group on Arbitrary Detention Opinion No. 16/2008 (Turkey) of 9 May 2008

Brett Rachel, *International Standards on Conscientious Objection to Military Service*, Human Rights & Refugees Publications, Quaker United Nations Office, November 2008.

<sup>7</sup> *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the UNHCR, Geneva, January 1992, paragraphs 167 - 174

Regarding whether protected conscientious objection to military service concerns only objection to war in general or also includes selective objection, or objection to a specific war, the UNHCR has instructed:

in line with the UNHCR Handbook and **evolving human rights law**, punishment for refusal to perform compulsory military service in the form of draft evasion or desertion may also be considered to be persecutory, if the reasons for refusal to serve are based on deeply held moral, religious or political convictions (conscientious objection). **The question as to whether the objection is selective is irrelevant in this regard.** UNHCR trusts that Member states will take this aspect into account.<sup>8</sup> (emphasis added)

To summarize, the UNHCR *Handbook*, the *International Covenant on Civil and Political Rights*, the *Universal Declaration of Human Rights*, and the *Canadian Charter of Rights and Freedoms*, all protect as a fundamental right the freedom of thought, conscience and religion. This fundamental right includes the right to conscientiously object to military service based on religious, moral, ethical, humanitarian or similar motives. The scope of this right has further been interpreted to include those who develop principled objections to military service after having volunteered to serve, and includes those who selectively object to only certain types of, or aspects of, military service.<sup>9</sup>

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<sup>8</sup> UNHCR *Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection Granted.* (OJ L 304/12 of 30.9.2004)

<sup>9</sup> CCPR/C/21/Rev.1/Add.4, *General Comment No. 22: The right to freedom of thought, conscience and religion* (Art. 18):.30/07/93